

# Poarch Band of Creek Indians

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## RECOMMENDED CHANGES TO THE NIGC'S PROPOSED RULE

### I. OPTION 1 – MAKE ALLOWANCE FOR TRIBES LOCATED IN STATES WITH MORE LENIENT GAMING LAWS

The Tribe believes strongly that consideration should be given to those isolated tribes who find themselves in a situation such as ours, with a Governor who refuses to negotiate a compact, yet permits the scope of gaming to flourish within the state. As discussed at length in materials submitted previously to the NIGC, without such consideration, we face economic ruin upon finalization of the Proposed Rules. To avoid this negative impact, tribes such as ours should be permitted the opportunity to comply with either the standards set forth within the Proposed Rules or the scope of games permitted within the state. Consequently, the Tribe recommends that §546.9(a) of the Proposed Rules be revised as follows:

#### **§ 546.9 What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?**

- (a) Except as provided in subsection (1), An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified as meeting the classification standards established by this part must submit the games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party must support the submission with materials and software sufficient to establish that the game and equipment meets classification standards and provide any other information requested by the testing laboratory.
- (1) An Indian tribe or a supplier, manufacturer, or game developer sponsored by a tribe (hereafter, the “requesting party”) wishing to have games and associated “electronic, computer, or other technologic aids” certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, must submit these games and equipment to a testing laboratory recognized by the Commission under this part. The requesting party may elect to support the submission with materials

and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part. A requesting party wishing to meet state requirements will submit additional supporting materials and documentation to the testing laboratory as may be necessary to meet the state requirements. Such requests shall follow the same procedural requirements as outlined in this part.

To further clarify the intent behind this provision, the Tribe also recommends the following changes:

**§ 546.1 What is the purpose of this part?**

This part clarifies the terms Congress used to define Class II gaming under the Indian Gaming Regulatory Act, 25 U.S.C. 2701, *et seq.* (IGRA or “Act”). Specifically, this part explains the criteria for determining whether a game of bingo or lotto, an “other game similar to bingo,” or a game of pull-tabs or “instant bingo,” meets the statutory requirements when these games are played primarily through an “electronic, computer or other technologic aid.” This part also establishes a process for establishing Class II certification of “electronic, computer, or other technologic aids” and the games they facilitate. This part further addresses those unique situations where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part. These standards for classification are intended to ensure that Class II gaming using “electronic, computer, or other technologic aids” can be distinguished from forms of Class III gaming that employ “electronic or electromechanical facsimiles” of a game of chance or slot machines.

**§ 546.4 What are the criteria for meeting the first statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(I), that the game of bingo, lotto, or other games similar to bingo be “played for prizes, including monetary prizes, with cards bearing numbers or other designations?”**

...

- (p) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

**§ 546.5** What are the criteria for meeting the second statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(II), that bingo, lotto, or other games similar to bingo be one “in which the holder of the card covers such numbers or other designations when objects similarly numbered or designated are drawn or electronically determined?”

...

(o) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

**§ 546.6** What are the criteria for meeting the third statutory requirement, as stated at 25 U.S.C. 2703 (7)(A)(i)(III), that bingo, lotto, or other games similar to bingo be “won by the first person covering a previously designated arrangement of numbers or designations on such cards?”

...

(p) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

**§ 546.7** What are the criteria for meeting the statutory requirement that pull-tabs or instant bingo not be an “electronic or electromechanical facsimile?”

...

(l) Where these games and associated “electronic, computer, or other technologic aids” are intended to be certified for operation in a tribal facility that is located in a state that permits the operation of games that are broader than those permitted as class II gaming under this part, the requesting party may elect to support the submission with materials and software sufficient to establish that these games and equipment meet the scope of gaming permitted in the state rather than the classification standards under this part as provided for in §546.9(a).

## **II. OPTION 2 – PERMIT CONTINUED OPERATION PENDING SECRETARIAL PROCEDURES**

If the NIGC elects not to implement our first option, the Tribe encourages the NIGC to incorporate language that would permit us to continue to operate existing games until such time as our request for secretarial procedures is finalized. To this end, we recommend the following language:

**§ 546.9 What is the process for approval, introduction, and verification of “electronic, computer, or other technologic aids” under the classification standards established by this part?**

(g) Secretarial Procedures. Notwithstanding any other requirements, tribes that have a request pending before the Secretary of the Department of the Interior for secretarial procedures as provided for in 25 CFR Part 291, and that satisfy the requirements of 25 CFR §291.3, may elect to continue operating existing games and delay compliance with the requirements of this part pending the final outcome of that request.

## **III. OPTION 3 – MODIFY THOSE SECTIONS MOST ECONOMICALLY DAMAGING TO THE TRIBE**

In the event the NIGC decides not to incorporate the language contained within either the Tribe’s first or second options, a number of revisions must be made to the Proposed Rules to enable us to minimally compete with the non-Indian gaming within the state. To this end, we recommend the following revisions:

### **A. Auto-Daub**

Auto-daub is a permitted feature within a game of bingo in the State of Alabama. Victoryland Dog Track, which is a mere 30 miles from the Tribe’s Wetumpka facility, currently operates approximately 3,500 electronic bingo machines that lawfully employ auto-daub. Our inability to utilize games that incorporate this same feature have already greatly impacted our revenues. With the addition of other requirements – in particular, the unnecessary game delays discussed below – we estimate that the Proposed Rules will immediately impact the revenues of our Atmore facility by up to 80%. With competition in central Alabama continuing to expand uninhibited, the Tribe’s facilities in Montgomery could no longer remain competitive and would be forced to close.

In order for the Tribe to compete with others in the state, we must be able to utilize technologic aids that assist a player in daubing. To that end, we respectfully request that the following changes be made to the Proposed Rule.

1. §546.5(e) must be deleted as follows:

~~(e) —To “cover,” a player in a game must take overt action after numbers or designations are released. A player covers (daubs) by touching either the screen or a designated button on the player station at least one time in each round after a set of numbers or other designations is released.~~

2. §546.5(f) must be modified to read as follows:

(f) Players must have an opportunity to cover (daub) after every release. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. All numbers or designations on a player’s card that have been properly covered (daubed) must be so indicated on the video screen at that player station by some readily apparent visible characteristic, such as by being displayed in a different color or marked by a strike-out through the space.

Thus, the following changes to §546.5(f) are needed:

(f) Players must have an opportunity to cover (daub) after every release. Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed. Each released number or designation does not have to be covered (daubed) individually by the player, i.e., the player need not touch each specific space on the electronic bingo card where the called number or designation is located. ~~However, the player must have to opportunity to cover (daub) by touching the screen or a designated button at least one time in each round when those numbers or other designations are released, if those numbers or other designations appear on the player’s card. Following this action by a player,~~All numbers or designations on a player’s card that have been properly covered (daubed) must be so indicated on the video screen at that player station ~~will display~~by some readily apparent visible characteristic, such as by being displayed in a different color on the number or designation on that player’s card, or marked by a strike-out through the space, ~~or some other readily apparent visible characteristic if that number or designation has been properly covered (daubed) by the player.~~ Players must be notified that they should cover (daub) their cards when the numbers or designations are revealed.

3. §546.5(g) must be modified to read as follows:

~~(g) Games may not include a feature whereby covering (daubing) after a release occurs automatically or without overt action taken by the player following the release.~~

4. §546.5(h) must be modified to read as follows:

(h) All players in a game, and not just a winning player, must be required by the rules of the game to have an opportunity to cover (daub) the selected numbers or other designations that appear on their card when those numbers or other designations are released as an indication of their participation in a common game.

#### **B. Unnecessary Game Delays**

Extending the amount of time required to play a game has a drastic effect upon its profitability. Because the games utilized by our competitors are not required to include such delays, the following changes must be made to the Proposed Rule in order for the Tribe to be able to compete.

1. §546.5(i) must be modified to read as follows:

(i) A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player's card, but the game may proceed as soon as all players have covered (daub) the selected numbers or other designations appearing on their cards.

Thus, the following changes to §546.5(i) are needed:

(i) A minimum of two (2) seconds must be provided after the completion of each release of numbers or other designations for players to complete each cover (daub) opportunity. The game may not proceed until at least one player has covered (daubed) the selected numbers or other designations appearing on the player's card, but, in any event the game may not proceed in less than two (2) seconds~~proceed as soon as all players have covered (daub) the selected numbers or other designations appearing on their cards.~~

2. §546.6(a) must be modified to read as follows:

(a) Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players. The system must be designed to provide an opportunity for more than two players to participate in each common game.

Thus, the following changes to §546.6(a) are needed:

(a) ~~Because the game must be won by the "first person," each game must be played by multiple players.~~ Players in an electronic game must be linked through a networked system. The system must require a minimum of two players for each game, but not limit participation to two players, ~~and must be designed to broaden participation in each common game by providing reasonable and sufficient opportunity for at least six players to enter the game. Games cannot begin until two (2) seconds have elapsed from the time that the first player elects to play, unless six players enter. Nothing in this section is intended to limit games to six players.~~ The system must be designed to provide an opportunity for more than two players to participate in each common game.

3. §546.6(c) must be modified to read as follows:

(c) To establish the game as a contest in which players play against one another, the game must provide for two or more releases of selected numbers or other designations. Each release will provide one or more number(s) or other designation(s) randomly selected or electronically determined. The numbers or other designations must be used in the sequence in which they are drawn. The game may end after the second release or after subsequent releases, when the game winning-pattern is covered (daubed) and claimed. After the game-winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).

Thus, the following changes to §546.6(c) are needed:

(c) To establish the game as a contest in which players play against one another, the game must provide for two or more ~~the~~ releases of selected numbers or other designations. Each release will provide one or more ~~numbers~~ number(s) or other ~~designations~~ designation(s) randomly selected or electronically determined. ~~Each release must take a minimum of two (2) seconds. Numbers~~ The numbers or other designations must be released one at a time used in the sequence in which they are drawn. The game may end after the second release or after subsequent releases, when the game winning-pattern is covered (daubed) and

claimed. After the game- winning pattern is covered and claimed, there may be additional releases of randomly drawn or electronically determined numbers or other designations for a consolation prize(s).

**C. Need Flexibility / Variety in Game Theme**

For us to keep pace with our competitors, we must also be able to offer our customers a variety of games. This includes not only a variety of game themes, but also a variety of gaming experiences. While some players may prefer a game with large, but less frequent jackpots, others prefer a game that pays smaller more frequent jackpots. Gaming customers are quick to identify their favorite game, and equally quick to realize that all games are the same. To ensure our ability to offer the proper mix of games, provisions within the Proposed Rules requiring that only games with common pays, patterns and probabilities be linked together must be removed.

1. §546.6(b) must be deleted as follows:

~~(b) — In order for a common game, and to meet the requirements for the minimum number of players, each player must be eligible to compete for all winning patterns in the game.~~

2. §546.6(l) must be deleted as follows:

~~(l) — Each game must provide an equal chance of obtaining any winning pattern for each card played by an active player in the game. The probability of achieving any particular pre designated winning pattern for a participating player in the game may not vary based on the amount wagered by that player.~~

**D. Prize Flexibility**

As stated above, it is critical that we be able to offer our customers a variety of gaming experiences. Several of the provisions within the Proposed Rules place restrictions upon prizes, the most problematic being §546.4(j), which mandates that the game-winning prize amount to no less than 20% of the amount wagered. The Tribe requests that this requirement be removed from the Proposed Rules.

1. §546.4(j) must be modified to read as follows:

(j) Each game must have a winning player and a game-winning prize must be awarded in every game. If the first player, or a subsequent player obtaining the game-winning prize pattern sleeps that pattern, the game must continue until a



player successfully achieves the game-winning pattern. The pattern designated as the game-winning pattern does not need to pay the highest prize available in the game. ~~A game winning prize may be less than the amount wagered, provided that the prize is no less than 20% of the amount wagered by the player on each card and at least one cent.~~

#### **E. Pull Tabs**

Two sections of the Proposed Rule regarding pull tabs are especially problematic. Sections 546.7(g) and (i), when read together, prohibit the accumulation of credits and the dispensing of vouchers or receipts representing winnings. If finalized, players would be forced to redeem each individual winning pull-tab at an alternate location. To alleviate the negative economic impact of these provisions, we require that the Proposed Rule be modified as follows.

1. §546.7(g) must be deleted as follows:

~~(g) — If the pull tab is a winning card, it must be redeemable for a prize when presented at the location in the gaming facility designated by the gaming operator.~~

2. §546.7(i) must be deleted as follows:

~~(i) — The machine cannot pay out winnings to the player, nor dispense vouchers or receipts representing such winnings.~~

#### **F. Definitions**

As will be discussed more fully within our written comment, the Tribe requests that the definitions of electromechanical facsimile and games similar to bingo remain unchanged.